

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

AUG 23 2005

Federal Communications Commission  
Office of Secretary

In the Matters of )  
)  
JAMES A. KAY, JR. )  
)  
Licensee of One Hundred Fifty Two Part 90 )  
Licenses in the Los Angeles, California Area )  
)  
MARC SOBEL AND MARC SOBEL )  
D/B/A AIR WAVE COMMUNICATIONS )  
)  
Licensee of Certain Part 90 Licenses )  
in the Los Angeles, California Area )

DOCKET FILE COPY ORIGINAL  
WT Docket No. 94-147

WT Docket No. 97-56

COMMENTS ON AND CONDITIONAL CONSENT  
TO REQUEST FOR EXTENSION OF TIME

James A. Kay, Jr. ("Kay") and Marc D. Sobel ("Sobel") (jointly, "Petitioners"), by their attorneys, hereby comment on the *Enforcement Bureau's Request for an Extension of Time* filed on August 17, 2005. The Enforcement Bureau seeks a 40 day extension of time until September 26, 2005, in which to respond to Petitioners' August 3, 2005, *Motion to Modify Sanctions*.

1. The sole justification offered for such a lengthy extension of time is a stated need to confer with others, including the Wireless Telecommunications Bureau, on the "complex policy issues" raised by the motion.<sup>1</sup> The timing of the extension request is problematic and potentially prejudicial for Petitioners. Although the *Motion to Modify Sanctions* was filed on

<sup>1</sup> In this regard, however, Petitioners question the accuracy of the Enforcement Bureau's assumption that the Wireless Telecommunications Bureau is a party to this proceeding for purposes of the *ex parte* rules. The Wireless Telecommunications Bureau was excluded from the definition of "decision-making personnel" during the time it was designated by the Commission as a party to the captioned proceedings, 47 C.F.R. § 1.1202(c), but that appears to have changed after a new Enforcement Bureau was created in 1999. See *Order* (FCC 99-172; released October 27, 1999). The *Enforcement Bureau's Notice of Appearance*, filed on November 12, 1999, advised "that effective immediately, the Enforcement Bureau is substituted for the Wireless Telecommunications Bureau as a party to this proceeding." (emphasis added). Enforcement did not *join* Wireless as an additional party, it was *substituted* for Wireless. Significantly, since November 12, 1999, neither Petitioners nor the Enforcement Bureau have served the Wireless Telecommunications Bureau as a party with any pleadings in these proceedings. The Commission may wish to consider whether treating the Wireless Telecommunications Bureau as a party unnecessarily deprives the Commission of access to the advice of its primary wireless policy staff.

No. of Copies rec'd 0-14  
List A B C D E

ORIGINAL

August 3, 2005, it is formal culmination of an initiative by Petitioners to have the sanctions modified in which the Enforcement Bureau has been actively involved since at least April 27, 2005. On that date, Petitioners submitted a letter to the Commissioners proposing negotiations looking toward a modified sanction package. That letter was served on counsel for the Enforcement Bureau. Since then, the Enforcement Bureau and Petitioners have participated in several meetings with advisors to the Commissioners and, more recently, with each of the Commissioners themselves. The Enforcement Bureau has had all of this time to confer with its sister bureau on the policy issues raised by the proposal.

2. Even if one considers only the time since the formal motion itself was filed, it is curious that the Enforcement Bureau waited until the last day on which its response was due, August 17, 2005, to seek an extension of time, and then requested an extension to a date that will place the pleading cycle well after the anticipated time for consideration of the pending certiorari request by the Supreme Court.<sup>2</sup> It presumably did not take the Enforcement Bureau a full two weeks to decide, at the last moment, that it needed to consult with the Wireless Telecommunications Bureau on this matter. This is something that, at least out of courtesy, could have been broached much earlier.

3. Notwithstanding these concerns, Petitioners have no objection to allowing adequate time for the policy issues to be adequately addressed, provided that the Commission stay the effectiveness of the extant revocation orders pending final action on the motion. Accordingly, provided that the Commission stays the effectiveness of the revocation orders pending any action on the motion, Petitioners do not object to the extension of time requested by the Bureau. This will preserve the status quo, keeping all policy options open and available for


---

<sup>2</sup> Petitioners have a petition for writ of certiorari pending in the United States Supreme Court (*Kay v. FCC*; Case No. 05-46; filed July 5, 2005). The matter is scheduled to be considered at a conference on September 26, 2005, the extended date sought by the Enforcement Bureau for its response. Any action by the Court may be announced as early as Monday, October 3, 2005, before the date for any reply to the Bureau's response.

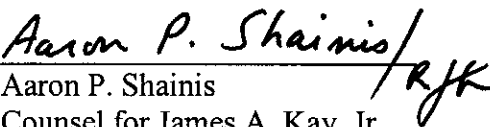
the Commission's consideration. Accordingly, Petitioners are filing concurrently herewith a *Motion for Stay Pending Action on Motion to Modify*.

WHEREFORE, Petitioners hereby conditionally consent to the requested 40 day extension of time, provided that the effectiveness of the revocation orders in the above-captioned proceedings is stayed pending final action on the *Motion to Modify*.

Respectfully submitted:

By:   
Robert J. Keller  
Counsel for James A. Kay, Jr., and  
Marc Sobel d/b/a Air Wave Communications

Law Offices of Robert J. Keller, P.C.  
PO Box 33428 – Farragut Station  
Washington, D.C. 20033-0428  
202-223-2100

By:   
Aaron P. Shainis  
Counsel for James A. Kay, Jr.

Shainis and Peltzman, Chartered  
1850 M Street, N.W. – Suite 240  
Washington, D.C. 20036-5803  
202-293-0011

Dated: August 23, 2005

Certificate of Service

I, Robert J. Keller, counsel for James A. Kay, Jr., and Marc Sobel d/b/a Air Wave Communications, hereby certify that on this 23rd day of August, 2005, I caused copies of the foregoing *Comments on Request for Extension of Time* to served, by U.S. mail, first class postage prepaid, on the following:

Kris Monteith, Acting Bureau Chief  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

William Davenport, Chief  
William D. Freedman, Deputy Chief  
Investigations & Hearings Division  
Enforcement Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Sam Feder, Acting General Counsel  
Daniel M. Armstrong, Associate General Counsel  
Federal Communications Commission  
445 12th Street, S.W. – Room 8-B724  
Washington, D.C. 20554

John J. Schauble, Esquire  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554



---

Robert J. Keller